

ABORTION AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions of the Utah Criminal Code to describe the difference between abortion and criminal homicide of an unborn child and to remove prohibitions against prosecution of a woman for killing an unborn child or committing criminal homicide of an unborn child.

Highlighted Provisions:

This bill:

- ▶ defines terms, including amending the definition of abortion to relate only to a medical procedure carried out by a physician, or through a substance used under the direction of a physician, with the consent of the woman on whom the abortion is performed;
- ▶ describes the difference between abortion and criminal homicide of an unborn child;
- ▶ removes prohibitions against prosecution of a woman for killing an unborn child or committing criminal homicide of an unborn child; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

76-5-201, as last amended by Laws of Utah 2002, Chapter 327

76-7-301, as last amended by Laws of Utah 2004, Chapters 90 and 272

76-7-302, as last amended by Laws of Utah 2009, Chapter 38

76-7-327, as enacted by Laws of Utah 2004, Chapter 272

76-7-314, as last amended by Laws of Utah 2009, Chapter 38

76-7-314.5, as enacted by Laws of Utah 2009, Chapter 38

33 ENACTS:

34 **76-7-301.5**, Utah Code Annotated 1953

35 REPEALS:

36 **76-7-329**, as enacted by Laws of Utah 2004, Chapter 272

37

38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **76-5-201** is amended to read:

40 **76-5-201. Criminal homicide -- Elements -- Designations of offenses.**

41 (1) (a) A person commits criminal homicide if ~~[he]~~ the person intentionally,
42 knowingly, recklessly, with criminal negligence, or acting with a mental state otherwise
43 specified in the statute defining the offense, causes the death of another human being, including
44 an unborn child at any stage of its development.

45 (b) There shall be no cause of action for criminal homicide for the death of an unborn
46 child caused by an abortion, as defined in Section 76-7-301.

47 (2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse
48 homicide, homicide by assault, negligent homicide, or automobile homicide.

49 Section 2. Section **76-7-301** is amended to read:

50 **76-7-301. Definitions.**

51 As used in this part:

52 (1) (a) "Abortion" means:

53 (i) the intentional termination or attempted termination of human pregnancy after
54 implantation of a fertilized ovum[~~-, and includes any and all procedures undertaken to kill a live~~
55 ~~unborn child and includes all procedures undertaken to produce a miscarriage.~~ through a
56 medical procedure carried out by a physician or through a substance used under the direction of
57 a physician;

58 (ii) the intentional killing or attempted killing of a live unborn child through a medical
59 procedure carried out by a physician or through a substance used under the direction of a
60 physician; or

61 (iii) the intentional causing or attempted causing of a miscarriage through a medical
62 procedure carried out by a physician or through a substance used under the direction of a
63 physician.

64 (b) "Abortion" does not include:

65 (i) removal of a dead unborn child[-];

66 (ii) the killing or attempted killing of an unborn child by a person other than a
67 physician;

68 (iii) the killing or attempted killing of an unborn child by any person through a
69 procedure other than a medical procedure or through a substance used under the direction of a
70 physician; or

71 (iv) the killing or attempted killing of an unborn child by a physician without the
72 consent of the woman, unless the physician is unable to obtain the consent due to a medical
73 emergency.

74 (2) "Medical emergency" means that condition which, on the basis of the physician's
75 good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the
76 immediate abortion of her pregnancy to avert her death, or for which a delay will create serious
77 risk of substantial and irreversible impairment of major bodily function.

78 (3) (a) "Partial birth abortion" means an abortion in which the person performing the
79 abortion:

80 (i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a
81 head first presentation, the entire fetal head is outside the body of the mother, or, in the case of
82 breech presentation, any part of the fetal trunk past the navel is outside the body of the mother,
83 for the purpose of performing an overt act that the person knows will kill the partially delivered
84 living fetus; and

85 (ii) performs the overt act, other than completion of delivery, that kills the partially
86 living fetus.

87 (b) "Partial birth abortion" does not include the dilation and evacuation procedure
88 involving dismemberment prior to removal, the suction curettage procedure, or the suction
89 aspiration procedure for abortion.

90 (4) "Physician" means:

91 (a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter
92 67, Utah Medical Practice Act~~[, a physician in the employment of the government of the~~
93 ~~United States who is similarly qualified, or];~~

94 (b) an osteopathic physician licensed to practice osteopathic medicine under Title 58,

Chapter 68, Utah Osteopathic Medical Practice Act[~~;~~]; or

(c) a physician employed by the federal government who has qualifications similar to a person described in Subsection (4)(a) or (b).

(5) "Hospital" means:

(a) a general hospital licensed by the Department of Health according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act[~~;~~and includes]; and

(b) a clinic or other medical facility to the extent that such clinic or other medical facility [provides] is certified by the Department of Health as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health. [It shall be the responsibility of the Department of Health to determine if such clinic or other medical facility so qualifies and to so certify.]

Section 3. Section **76-7-301.5** is enacted to read:

76-7-301.5. Relationship to criminal homicide.

(1) This part does not apply to the killing or attempted killing of a live unborn child in any manner that is not an abortion.

(2) The killing or attempted killing of a live unborn child in a manner that is not an abortion shall be punished as provided in Title 76, Chapter 5, Part 2, Criminal Homicide.

Section 4. Section **76-7-302** is amended to read:

76-7-302. Circumstances under which abortion authorized.

(1) As used in this section, "viable" means that the unborn child has reached a stage of fetal development when the unborn child is potentially able to live outside the womb, as determined by the attending physician to a reasonable degree of medical certainty.

(2) An abortion may be performed in this state only by a physician [~~licensed to practice medicine under Title 58, Chapter 67, Utah Medical Practice Act or an osteopathic physician licensed to practice medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act].~~

(3) An abortion may be performed in this state only under the following circumstances:

(a) the unborn child is not viable; or

(b) the unborn child is viable, if:

(i) the abortion is necessary to avert:

(A) the death of the woman on whom the abortion is performed; or

(B) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(ii) two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly lethal; or

(iii) (A) the woman is pregnant as a result of:

(I) rape, as described in Section 76-5-402;

(II) rape of a child, as described in Section 76-5-402.1; or

(III) incest, as described in Subsection 76-5-406(10) or Section 76-7-102; and

(B) before the abortion is performed, the physician who performs the abortion:

(I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to law enforcement; and

(II) complies with the requirements of Section 62A-4a-403.

~~[(4) Notwithstanding any other provision of this section, a woman who seeks to have, or obtains, an abortion for herself is not criminally liable.]~~

Section 5. Section **76-7-314** is amended to read:

76-7-314. Violations of abortion laws -- Classifications.

~~[(1) Notwithstanding any other provision of law, a woman who seeks to have or obtains an abortion for herself is not criminally liable.]~~

~~[(2) A woman upon whom a partial birth abortion is performed may not be prosecuted under Section 76-7-326 or 76-7-329 for a conspiracy to violate Section 76-7-326 or 76-7-329.]~~

~~[(3)]~~ (1) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311, or 76-7-312 is a felony of the third degree.

~~[(4)]~~ (2) A violation of Section 76-7-326 ~~[or 76-7-329]~~ is a felony of the third degree.

~~[(5)]~~ (3) A violation of Section 76-7-314.5 is a felony of the second degree.

~~[(6)]~~ (4) A violation of any other provision of this part is a class A misdemeanor.

Section 6. Section **76-7-314.5** is amended to read:

76-7-314.5. Killing an unborn child.

~~[(1)]~~ A person is guilty of killing an unborn child if the person causes the death of an

157 unborn child by performing an abortion of the unborn child in violation of the provisions of
158 Subsection 76-7-302(3).

159 ~~[(2) Notwithstanding any other provision of this section, a woman who seeks to have,~~
160 ~~or obtains, an abortion for herself is not criminally liable.]~~

161 Section 7. Section **76-7-327** is amended to read:

162 **76-7-327. Remedies for father or maternal grandparents.**

163 (1) The father, if married to the mother at the time she receives a partial birth abortion,
164 and if the mother has not attained the age of 18 years at the time of the abortion, the maternal
165 grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy
166 resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

167 (2) Such relief shall include:

168 (a) money damages for all injuries, psychological and physical, occasioned by the
169 violation of Section 76-7-326 ~~[or 76-7-329]~~; and

170 (b) statutory damages equal to three times the cost of the partial birth abortion.

171 Section 8. **Repealer.**

172 This bill repeals:

173 Section **76-7-329, Person unauthorized to perform abortions -- Penalties.**

174 Section 9. **Effective date.**

175 If approved by two-thirds of all the members elected to each house, this bill takes effect
176 upon approval by the governor, or the day following the constitutional time limit of Utah
177 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
178 the date of veto override.

Legislative Review Note

as of 10-23-09 12:54 PM

Office of Legislative Research and General Counsel